



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on January 16, 2018. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the filing fee from the tenants for the cost of this application.

The landlord's agent (the "agent") attended the hearing and provided testimony. The tenants did not attend the hearing.

The agent testified that the tenants moved out of the rental unit and returned the keys to them on January 2, 2018. The agent further testified that each of the tenants were sent a copy of the Application for Dispute Resolution, Notice of Hearing, along with supporting documentary evidence, by registered mail on November 3, 2017. I find the tenants received this package on November 8, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The agent stated that she no longer requires an order of possession (the 1st ground listed above), given that the tenants moved out. I have amended her application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenants for the cost of this application?

Background and Evidence

The agent testified that monthly rent is \$1,870.00, and is due on the first of the month. The agent testified that the landlord currently holds a security deposit of \$910.00. The agent stated that the tenants rent a parking spot (\$50.00) and a storage locker (\$15.00) by the month and have also failed to pay this for several months.

The tenancy agreement provided by the agent shows that the parking and storage each have separate agreements and amounts above and beyond what is included in monthly rent.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice), which was posted to the tenants' door on October 10, 2017. At the top of the 10 Day Notice, the agent specified that the tenants owed \$1,120.00 in rent at the time the 10 Day Notice was issued. The agent testified that service of the 10 Day Notice was witnessed by a third party.

The agent stated that the Tenants have recently started to fall behind on rent, and have continually had a balance outstanding for the last few months. In summary, the agent stated that the Tenants still owe:

- \$1,135.00 in rent plus \$25.00 late rent fee for November 2017
- \$1,870.00 in rent plus \$25.00 late rent fee for December 2017
- \$1,870.00 in rent plus \$25.00 late rent fee for January 2018

The agent relied on the tenancy agreement which indicates that there is a late fee of \$25.00 for late/non-payment of rent.

The agent stated that the Tenants left the unit sometime in early January 2018, but they left a significant mess, along with some damage which has prevented them from being able to re-rent the unit for January 2018. As such, the agent is requesting compensation for the month of January 2018.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the agent's request to be compensated for unpaid parking and storage fees, I decline jurisdiction on this matter because I find that they are separate parallel agreements, outside of the tenancy agreement.

With respect to the agent's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the agent's undisputed documentary evidence and testimony before me to demonstrate that the tenants owe and have failed to pay: \$4,875.00 (as above) in rent plus \$75.00 in late rent fees (as above) for November 2017 through January 2018.

The agent requested that they be able to retain the security deposit of \$910.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

<u>Claim</u>	<u>Amount</u>
Unpaid rent	\$4,875.00

Late rent fee	\$75.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$910.00)
TOTAL:	\$4,140.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,140.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 16, 2018

Residential Tenancy Branch